

EXHIBIT “E”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

VIVIAN RIVERA-ZAYAS, as Administrator of the
Estate of ANA MARTINEZ, Deceased,

Plaintiff(s),

-against-

OUR LADY OF CONSOLATION GERIATRIC CARE
CENTER, OUR LADY OF CONSOLATION
GERIATRIC CARE CENTER d/b/a OUR LADY OF
CONSOLATION NURSING AND REHABILITATIVE
CARE CENTER, and OUR LADY OF
CONSOLATION NURSING AND REHABILITATIVE
CARE CENTER,

Defendant(s),

Case No.: 2:20-cv-05153-NGG-
SIL

AFFIDAVIT OF NEW YORK
STATE ASSEMBLY MEMBER
RONALD T. KIM

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

I, Ronald T. Kim, being duly sworn, deposes and says:

1. I am a Member of the New York State Assembly representing the 40th Assembly District. I am Chair of the Committee on Aging, and a Member of the following Committees: Committee on Corporations, Authorities and Commissions; Committee on Education; Committee on Governmental Operations; Committee on Housing; Black, Puerto Rican, Hispanic & Asian Legislative Caucus; and the Puerto Rican/Hispanic Task Force.
2. I am the Sponsor of Assembly Bill A03397, titled "An act to repeal article 30-d of the public health law relating to the emergency or disaster treatment protection act". A copy of the Assembly Memorandum in Support of Legislation is attached to this Affidavit as Exhibit "A".
3. As stated in the Memorandum, the Purpose of the Bill is as follows: "This bill repeals Article 30-D of the Public Health Law (colloquially known as the Emergency or Disaster Treatment Protection Act) with the intent of holding health care facilities, administrators, and executives accountable for harm and damages incurred."
4. As further stated in the Memorandum, the Justification for the Bill is as follows:

As the COVID-19 pandemic has progressed in New York State, it is now apparent that negligence by administrators and executives of nursing homes has occurred at an extraordinary degree. The consequences have been tragic: as of early May 2020, nearly five thousand of New York's elderly and most vulnerable residents have succumbed to this disease, and to date, there has been zero accountability nor transparency for these preventable deaths. The ELFA bill (A.9506/S.7506) in the FY 2021 state budget bills codified Article 30-D of the Public Health Law. In particular, Article 30-D egregiously uses severe liability standards as a means to insulate health care facilities and specifically, administrators and executives of such facilities, from any civil or criminal liability for negligence. Repealing this article is a much-needed step to holding health care administrators accountable and doing everything possible to stop even more preventable deaths from happening.

5. As set forth by the Assembly Memorandum, the purpose of the Bill is twofold: 1) to hold health care facilities, administrators, and executives accountable for failures which led to the deaths of thousands of nursing homes residents, including inadequate preparation, failure to follow protocols, and inadequate care relating to COVID-19 during the COVID-19 emergency period, and 2) to stop even more preventable deaths from occurring in the future.
6. As the Sponsor of the Bill, I want to make it clear that the Bill was intended to retroactively repeal the unfair immunity law so as to afford victims of nursing home negligence their day in Court should they so choose, and seek justice pursuant to the available causes of action under state law which provide civil remedies to protect nursing home residents. To be certain, the intent of the law is to repeal the Emergency or Disaster Treatment Protection Act, Public Health Law Article 30-D, retroactively as of March 7, 2020.
7. The retroactive intent of the subject Bill was made known to the entire voting body during the Assembly Floor Debate on March 4, 2021, prior to the Assembly vote. During the Assembly Floor Debate, as the Sponsor of the Bill, I was questioned as to whether the Bill was intended to retroactively repeal the immunity law, and I testified unequivocally that it should be applied retroactively. A copy of the relevant Assembly testimony is attached to this Affidavit as Exhibit "B".
8. After the Floor Debate, the Bill passed through the Assembly by a vote of 149 to 1, and on April 6, 2021, NYS Governor Cuomo signed this legislation into law which fully repeals the State's COVID-19 immunity statute, the Emergency or Disaster Treatment Protection Act (EDTPA) under Article 30-D of the Public Health Law.

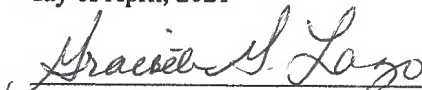
I declare under penalty of perjury that the foregoing is true and correct.

Dated: Queens, New York
April 15, 2021



Ronald T. Kim

Sworn to before me this 15th
day of April, 2021



Notary Public

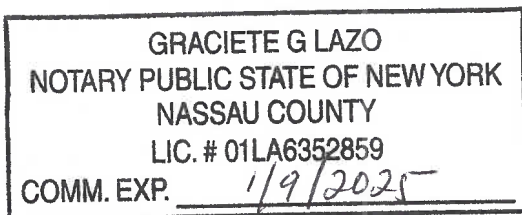


EXHIBIT A

A03397 Summary:

BILL NO A03397

SAME AS SAME AS

SPONSOR Kim

COSPNR Gottfried, Weinstein, Epstein, Jacobson, Byrnes, Montesano, Niou, Glick, Rosenthal L, Barron, Griffin, McDonough, Steck, Carroll, Cymbrowitz, Hevesi, Simon, Quart, Zinerman, Abinanti, Seawright, Mitaynes, Jackson, Anderson, Thiele, DeStefano, Lawler, Hawley, Salka, Tague, Simpson, Kelles, Vanel, Lunsford, Cahill, Pichardo, Richardson, Bronson, Zebrowski, Williams, Bichotte Hermelyn, Sayegh, Dinowitz, Gonzalez-Rojas, Gallagher, Forrest, Nolan, Clark, Perry, Santabarbara, Peoples-Stokes, Hunter, Blankenbush, Miller M

MLTSPNSR Sillitti

Rpld Art 30-D, Pub Health L

Repeals the emergency or disaster treatment protection act which protects health care facilities and health care professionals from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.

A03397 Actions:

BILL NO A03397

01/26/2021 referred to health
 03/01/2021 reported referred to codes
 03/01/2021 reported referred to rules
 03/01/2021 reported
 03/02/2021 rules report cal.23
 03/02/2021 ordered to third reading rules cal.23
 03/04/2021 passed assembly
 03/04/2021 delivered to senate
 03/04/2021 REFERRED TO HEALTH
 03/24/2021 SUBSTITUTED FOR S5177
 03/24/2021 3RD READING CAL.582
 03/24/2021 PASSED SENATE
 03/24/2021 RETURNED TO ASSEMBLY
 04/01/2021 delivered to governor
 04/06/2021 signed chap.96

A03397 Committee Votes:**HEALTH Chair:Gottfried**

DATE: 03/01/2021 AYE/NAY: 26/0 Action: Favorable refer to committee Codes

Gottfried	Aye	Byrne	Aye
Galef	Aye	McDonough	Aye
Dinowitz	Aye	Byrnes	Aye
Cahill	Aye	Ashby	Aye
Paulin	Aye	Miller	Aye
Cymbrowitz	Aye	Salka	Aye
Gunther	Aye	Jensen	Aye
Rosenthal L	Aye		
Hevesi	Aye		
Steck	Aye		
Abinanti	Aye		
Braunstein	Aye		
Solages	Aye		
Bichotte	Aye		
Barron	Aye		
Sayegh	Aye		
Rosenthal D	Aye		
McDonald	Aye		
Reyes	Aye		

CODES Chair:Dinowitz

DATE: 03/01/2021 AYE/NAY: 22/0 Action: Favorable refer to committee Rules

Dinowitz	Aye	Morinello	Aye
Pretlow	Aye	Giglio	Aye
Cook	Aye	Montesano	Aye
Cymbrowitz	Aye	Reilly	Aye
O'Donnell	Aye	Mikulin	Aye
Lavine	Aye	Tannousis	Aye
Perry	Aye		
Abinanti	Aye		
Weprin	Aye		
Hevesi	Aye		
Fahy	Aye		
Seawright	Aye		
Rosenthal	Aye		
Walker	Aye		
Vanel	Aye		
Cruz	Aye		

RULES Chair:Gottfried

DATE: 03/01/2021 AYE/NAY: 29/0 Action: Favorable

Heastie	Excused	Barclay	Aye
Gottfried	Aye	Hawley	Aye
Nolan	Aye	Giglio	Aye
Weinstein	Aye	Blankenbush	Aye
Pretlow	Aye	Norris	Aye
Cook	Aye	Montesano	Aye
Glick	Aye	Ra	Aye
Aubry	Aye	Brabenec	Aye
Englebright	Aye		
Dinowitz	Aye		
Colton	Aye		
Magnarelli	Aye		
Perry	Aye		
Paulin	Aye		
Peoples-Stokes	Excused		
Benedetto	Aye		
Lavine	Aye		
Lupardo	Aye		
Zebrowski	Aye		
Thiele	Aye		
Braunstein	Aye		
Dickens	Aye		
Davila	Aye		

A03397 Floor Votes:

DATE: 03/04/2021		Assembly Vote		YEA/NAY: 149/1							
Abbate	Y	Clark	Y	Frontus	Y	Lalor	Y	Paulin	Y	Sillitti	Y
Abinanti	Y	Colton	Y	Galef	Y	Lavine	Y	Peoples-Stokes	Y	Simon	Y
Anderson	Y	Conrad	Y	Gallagher	Y	Lawler	Y	Perry	Y	Simpson	Y
Angelino	Y	Cook	Y	Gallahan	Y	Lemondes	Y	Pheffer Amato	Y	Smith	Y
Ashby	Y	Cruz	Y	Gandoifo	Y	Lunsford	Y	Pichardo	Y	Smullen	Y
Aubry	Y	Cusick	Y	Giglio JA	Y	Lupardo	Y	Pretlow	Y	Solages	Y
Barclay	Y	Cymbrowitz	Y	Giglio JM	Y	Magnarelli	Y	Quart	Y	Steck	Y
Barnwell	Y	Darling	Y	Glick	Y	Mamdani	Y	Ra	Y	Stern	Y
Barrett	Y	Davila	Y	Gonzalez-Rojas	Y	Manktelow	Y	Rajkumar	Y	Stirpe	Y
Barron	Y	De La Rosa	Y	Goodell	Y	McDonald	Y	Ramos	Y	Tague	Y
Benedetto	Y	DeStefano	Y	Gottfried	Y	McDonough	Y	Reilly	Y	Tannousis	Y
Bichotte	Y	Dickens	Y	Griffin	Y	McMahon	Y	Reyes	Y	Taylor	Y
Blankenbush	Y	Dilan	Y	Gunther	Y	Meeks	Y	Richardson	Y	Thiele	Y
Brabenec	Y	Dinowitz	Y	Hawley	Y	Mikulin	Y	Rivera J	Y	Vanel	Y
Braunstein	Y	DiPietro	Y	Hevesi	Y	Miller B	Y	Rivera JD	Y	Walczyk	Y
Bronson	Y	Durso	Y	Hunter	Y	Miller ML	Y	Rodriguez	Y	Walker	Y
Brown	Y	Eichenstein	Y	Hyndman	Y	Mitaynes	Y	Rosenthal D	Y	Wallace	Y
Burdick	Y	Englebright	Y	Jackson	Y	Montesano	Y	Rosenthal L	Y	Walsh	Y
Burgos	Y	Epstein	Y	Jacobson	Y	Morinello	Y	Rozic	Y	Weinstein	Y
Burke	Y	Fahy	Y	Jean-Pierre	Y	Niou	Y	Salka	Y	Weprin	Y
Buttenschon	Y	Fall	Y	Jensen	Y	Nolan	Y	Santabarbara	Y	Williams	Y
Byrne	Y	Fernandez	Y	Jones	Y	Norris	Y	Sayegh	Y	Woerner	Y
Byrnes	NO	Fitzpatrick	Y	Joyner	Y	O'Donnell	Y	Schmitt	Y	Zebrowski	Y
Cahill	Y	Forrest	Y	Kelles	Y	Otis	Y	Seawright	Y	Zinerman	Y
Carroll	Y	Friend	Y	Kim	Y	Palmesano	Y	Septimo	Y	Mr. Speaker	Y

A03397 Memo:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A3397**SPONSOR:** Kim**TITLE OF BILL:**

An act to repeal article 30-d of the public health law relating to the emergency or disaster treatment protection act

PURPOSE OR GENERAL IDEA OF BILL:

This bill repeals Article 30-D of the Public Health Law (colloquially known as the Emergency or Disaster Treatment Protection Act) with the intent of holding health care facilities, administrators, and executives accountable for harm and damages incurred.

SUMMARY OF PROVISIONS:

Section 1 amends the Public Health Law by repealing Article 30-D.

Section 2 provides the effective date.

DIFFERENCE BETWEEN ORIGINAL AND AMENDED VERSION (IF APPLICABLE):

This is a new bill.

JUSTIFICATION:

As the COVID-19 pandemic has progressed in New York State, it is now apparent that negligence by administrators and executives of nursing homes has occurred at an extraordinary degree. The consequences have been tragic: as of early May 2020, nearly five thousand of New York's elderly and most vulnerable residents have succumbed to this disease, and to date, there has been zero accountability nor transparency for these preventable deaths. The ELFA bill (A.9506/S.7506) in the FY 2021 state budget bills codified Article 30-D of the Public Health Law. In particular, Article 30-D egregiously uses severe liability standards as a means to insulate health care facilities and specifically, administrators and executives of such facilities, from any civil or criminal liability for negligence. Repealing this article is a much-needed step to holding health care administrators accountable and doing everything possible to stop even more preventable deaths from happening.

PRIOR LEGISLATIVE HISTORY:

This is a new bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE: Immediately upon passage.

A03397 Text:

STATE OF NEW YORK

3397

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

Introduced by M. of A. KIM, EPSTEIN, JACOBSON, GOTTFRIED, BYRNES, MONTESANO, NIOU, GLICK, L. ROSENTHAL, BARRON, GRIFFIN, McDONOUGH, STECK, CARROLL, CYMBROWITZ, HEVESI, SIMON, QUART -- read once and referred to the Committee on Health

AN ACT to repeal article 30-d of the public health law relating to the emergency or disaster treatment protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Article 30-d of the public health law is REPEALED.
- 2 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02984-01-1

A03397 Chamber Video/Transcript:

EXHIBIT B

NYS ASSEMBLY

MARCH 4, 2021

going to reassert its powers in this time of a pandemic.

I commend the sponsor and I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Abinanti in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A03397, Rules Report No. 22, Kim, Gottfried, Weinstein, Epstein, Jacobson, Byrnes, Montesano, Niou, Glick, L. Rosenthal, Barron, Griffin, McDonough, Steck, Carroll, Cymbrowitz, Hevesi, Simon, Quart, Zinerman, Abinanti, Seawright, Mitaynes, Jackson, Anderson, Thiele, DeStefano, Lawler, Hawley, Salka, Tague, Simpson, Kelles, Otis, Vanel, Lunsford, Cahill, Pichardo, Richardson, Bronson, Zebrowski, Williams, Bichotte Hermelyn, Sayegh, Dinowitz, González-Rojas, Gallagher, Forrest, Nolan, Clark. An act to repeal Article 30-d of the Public Health Law relating to the Emergency or Disaster Treatment Protection Act.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: An explanation, please.

ACTING SPEAKER AUBRY: Mr. Kim, an explanation is requested.

MR. KIM: Thank you, Mr. Speaker. The bill would return to the status quo and eliminate the legal immunity from liability enacted one year ago for negligence resulting from treatment of

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individuals during the COVID-19 pandemic period. The bill repeals Article 30-d of the Public Health Law, the Emergency or Disaster Treatment Protection Act. The law affords healthcare facilities, including nursing home and long-term facilities and certain professionals and corporate executives immunity from liability, civil or criminal, for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing healthcare services during the COVID-19 emergency period.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Mr. Speaker, will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. BYRNE: Thank you, Mr. Kim. I know you've worked very hard on this issue and you've been very public about your position, so I appreciate all the advocacy that you've done. I'd like to just make sure we get some questions clarified here. The initial bill, Article 30-d was put into policy through the budget last year, and we did a partial rollback - I think it was in June or July - that basically took away the immunity for the non-COVID-related treatment. Would that be correct in your -- in your view, and is there any other gaps that this repeal would fill?

MR. KIM: We did a partial modification of -- of

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ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Byrnes.

MS. BYRNES: Thank you, Mr. Speaker. If I could ask the sponsor a question, please.

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

MS. BYRNES: Thank you.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. BYRNES: In the Health Committee we were at least kind of lead to believe that the intention of this bill was not to be -- that it would not be retroactive. Is it my understanding that as we now prepare to vote on it that you're not in a position to state that your intention is that this bill should go forward versus attempting to achieve a retroactive effect?

MR. KIM: Again, my intent is to reinstate the status quo, and it will ultimately be up to the courts to decide whether the civil liability will be applied retroactively. But what I can do tell you is that the -- according to the U.S. Constitution and the New York State Constitution which prohibit ex post facto criminal liability, this means it is not lawful to retroactively create a crime. But no similar restrictions apply to civil liability.

MS. BYRNES: All right. As -- as the sponsor of the bill, though, is it your intent that it not be retroactive or is it your intent that it is retroactive?

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MR. KIM: I believe that Article 30-d went into effect on April 30 -- April 3rd when the bill was signed by the Executive, and retroactively give corporate legal immunity to healthcare and nursing home businesses going back to March 7th. This means that any person who might have suffered in a healthcare or nursing home facility due to negligence during the month of March 2020 lost their rights as patients and residents without even knowing about it. So -- so it's also equally important to acknowledge that, you know, these facilities acted during that time period, March 7th through April 3rd without any reliance on the legal immunity. So I do believe that when we repeal this it will apply for that month. As far as for April 3rd to the present, you know -- you know, it will have to be determined in court.

MS. BYRNES: What is your intent, though?

MR. KIM: My intent is because they did not -- because the Executive took away the patients' and the residents' rights to get access to information and were banned from entering the premise [sic] to prove if there was any gross negligence, if there was any reckless behavior. And the Executive also issued a mandate saying that medical records are waived. So he -- he made it impossible to prove -- for the families to prove if there were any reckless intentional behavior. So as we strike this, I do believe that it should be applied retroactively. But again, that has to be determined in court because it is not stated in writing in this particular piece of legislation.